



second injury occurred in November or December of 1996 while he was moving furniture for respondent in Kansas City.”

The Brief on Behalf of Respondent and Insurance Carrier begins: “At the preliminary hearing of June 12, 1997, claimant specifically testified he is claiming an injury from August 5, 1996 through August 10, 1996 after lifting some air conditioners. In fact, claimant filled out an Employer’s Report of Accident specifically referring to a date of accident of August 10, 1996. . . . Thus, it is clear claimant’s date of accident is August 10, 1996.” (Citations omitted).

It is not necessary that the precise date of accident be established at this time for purposes of determining the notice issue. In this case, whether notice was given within 10 days does not turn on the date of the accident but rather on the credibility of the claimant versus the respondent’s witness, Miaja Wilgers. Claimant says he told his supervisor, Miaja Wilgers, during the week of his first alleged injury that he was having soreness from lifting and, likewise, told her about his soreness after lifting and moving furniture in Kansas City. Ms. Wilgers denied any knowledge that claimant was claiming a work injury until January 31, 1997, after he had been terminated on January 10, 1997. She did admit, however, that sometime in November, after claimant had moved furniture from Kansas City, he casually mentioned some soreness but he did not relate it to any specific cause. Her recollection was that claimant had moved the furniture during the first week of November 1996.

Because of the conflict in the testimony between claimant and Ms. Wilgers with regard to the notice of a work-related accident, the respective credibility of these two witnesses becomes an important consideration. If claimant’s testimony is believed, then there was proper notice. Conversely, if the testimony of Ms. Wilgers is accepted as true, then the notice was inadequate. The Administrative Law Judge apparently found claimant to be the more credible witness because he awarded benefits. In weighing the conflicting testimony and determining the respective credibility of the witnesses, the Appeals Board takes into consideration that the Administrative Law Judge had the opportunity to personally observe the testimony. In this respect, he had the unique opportunity to observe their demeanor and assess their credibility. Therefore, the Appeals Board gives some deference to the findings and conclusions of the Administrative Law Judge in this regard.

Giving due deference to the findings of the Administrative Law Judge together with the testimony of the witnesses and the exhibits admitted into evidence, the Appeals Board finds that at this point in the proceedings the preponderance of the credible evidence supports the conclusion that proper notice was timely given.

**WHEREFORE**, it is the finding, decision and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark, dated June 12, 1997, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1997.

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BOARD MEMBER

c: Steven L. Foulston, Wichita, KS  
Eric K. Kuhn, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director